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Mona A. Brachman

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR - 5 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET NO. 93-231

IN THE MATTER OF:

PR DOCKET NO. 93-231

Charleston, West Virginia

DATE OF HEARING: February 4, 1994

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MAR - 3 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
OFFICE OF THE SECRETARY

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In the matter of:)
)
CAPITOL RADIOTELEPHONE COMPANY, INC.) PR DOCKET NO. 93-231
a/k/a CAPITOL RADIOTELEPHONE, INC.)
or CAPITOL RADIO TELEPHONE, INC.)
d/b/a CAPITOL PAGING AND)
RAM TECHNOLOGIES, INC.)
)
Charleston, West Virginia)
-----)

The above-entitled matter came on for hearing pursuant to
Notice before Judge Joseph Chachkin, Administrative Law Judge,
at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3,
on Friday, February 4, 1993 at 9:33 a.m.

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I N D E X

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1					
2					
3	<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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24	Hearing Began: 9:33 a.m.	Hearing Ended: 3:59 p.m.		
25	Lunch Break Began: 12:30 p.m.	Lunch Break Ended: 1:35 p.m.		

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P R O C E E D I N G S

JUDGE CHACHKIN: On the record. Mr. Hardman?

MR. HARDMAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HARDMAN:

Q Mr. Bobbitt, before we resume our discussion from the point at the recess I have a technical question that I would like to ask you which is for a digital modulation, at what deviation do you set RAM's bay station transmitters?

A I don't know.

Q You don't know? We were talking yesterday at the recess about the different phases of, of interference that RAM experienced and we were up to phase 3, as I recall, the -- what -- can we agree on calling it the testing phase?

A Yes.

Q All right. And these consisted of, of a series of tones? Is that right?

A Yes.

Q And would it be fair to say they were two tone sequential tones in some kind of pattern?

A That's what they sounded like, yes.

Q All right. And these transmissions in your opinion delayed RAM's messages? Isn't that right?

A Yes.

Q But there was no pattern of these tones transmitting

1 on top of RAM's pages, were there?

2 A I don't recall. I believe there were, but I can't
3 recall a specific instance.

4 Q Well, I'm asking about a pattern. I'm not asking
5 you whether there were instances but I'm asking about was
6 there was pattern?

7 A I don't recall.

8 Q And then the next phase was the phase in -- when the
9 -- in connection with the monitoring in August '92 and
10 subsequently? Is that right?

11 A The verifier monitoring?

12 Q Yes.

13 A Yes.

14 Q And can we call that the retransmission phase for
15 ease of identification? Can we agree on that?

16 A Okay.

17 Q All right. And, again, the -- as I understand your
18 testimony, your position is that the transmissions on 152.48
19 that were apparently duplicates of transmissions on 152.51
20 delayed the RAM messages from being transmitted. Is that
21 right?

22 A It did that.

23 Q And that, that was the, the interference that RAM
24 experienced --

25 A The delay?

1 Q -- in your opinion?

2 A The delay?

3 Q Yes.

4 A No. No. The -- what I believed was that they had
5 no legitimate reason or purpose and that they were --

6 Q Well --

7 A -- intentionally put on there just to cause harmful
8 interference.

9 Q Mr. Bobbitt, that goes to intent which may form the
10 basis of your opinion. I'm asking you the objective of fact
11 about what it was about this transmission that in your opinion
12 constituted interference and I'm trying to -- as I understand
13 your testimony, your position is that it was interference
14 because these, these duplicate transmissions delayed RAM's
15 legitimate paging messages. Isn't that right?

16 A Unnecessarily, yes.

17 Q All right. I'll accept that qualification. Again,
18 there was no pattern of these transmissions coming up on top
19 of RAM's legitimate paging messages? Isn't that right?

20 A I think by this time that -- the busy monitor was
21 installed and working properly and I don't recall any stepping
22 on to any large extent.

23 Q So the answer to my question is yes? Isn't that
24 right?

25 A Well, when I listened, yes.

1 Q All right. Now, in the RAM network is the
2 Charleston, St. Albans and I guess Burlington, Ohio
3 transmitters -- and then Burlington, Ohio serves Ashland --
4 are they are in the same zone?

5 A Yes.

6 Q So those three transmitters are simulcast?

7 A Yes.

8 Q And where do the -- where does RAM maintain the
9 monitors or -- well, let me back up. Does RAM engage in any
10 off the air monitoring at those locations prior to
11 transmission?

12 A Yes.

13 Q And where does it maintain the air monitors?

14 A One in Charleston and one in Ashland.

15 Q So they are, are two of them?

16 A Yes.

17 Q And would -- if either receiver detects a signal,
18 co-channel signal, is the system configured that either
19 receive can lock out RAM's transmitters?

20 A In that zone, yes.

21 Q In that zone. And has this always been true?

22 A Yes.

23 Q When I say always been true, I mean in the -- say
24 from fall of 1990 to the present.

25 A Well, I don't recall when they were all put on the

1 air, but, but they were always -- together so that either
2 Charleston's receiver or Huntington's receiver would institute
3 a busy condition to us.

4 Q Do you -- were, were one or more of these monitors
5 in service as of the fall of 1990?

6 A I don't recall when both of them went on the air.

7 Q Well, my question was was either one, not both.

8 A Again, I don't recall when they went on the air, but
9 as soon as there was other transmissions in the area there
10 were busy monitors on the air, yes.

11 Q So you -- your testimony is that, that RAM installed
12 busy monitors when it became aware that there was co-channel
13 traffic on 152.48? Is that right?

14 A To the best of my knowledge, yes.

15 Q All right. And so I assume then -- well, is it your
16 testimony then that the air monitors would have been in place,
17 one or more air monitors, would have been in place in the
18 Charleston/Huntington area during the 1990 time frame and
19 subsequently?

20 A Again, I don't recall.

21 Q You were in charge of the system?

22 A At a level, yes.

23 Q Isn't air monitoring a fairly fundamental
24 requirement?

25 A Yes, but I just don't recall when it was -- when it

1 went on the air, the exact time frame.

2 Q Well, Mr. Bobbitt, you have to --

3 A Mr. Capehart or Mr. Blatt may recall because Mr.
4 Blatt would have installed them, but I don't recall.

5 Q Well, but you were, you were responsible for the
6 technical operation of the system, were you not?

7 A To some level, yes.

8 Q To some level. And you're having all these
9 perceived problems with Capitol and you don't remember whether
10 you had your own air monitors installed or not?

11 A That's correct. I don't remember the dates.

12 Q Do you remember that your air monitors were
13 installed during this period of time regardless of the
14 specific date?

15 A No, I don't.

16 Q Do you know whether RAM ever turned its air monitors
17 off on 152.48 megahertz?

18 A No, I don't, I don't know that.

19 Q So they could have, couldn't RAM?

20 A Yes, they could have.

21 Q Now, as I recall your testimony, you said yesterday
22 that you had no knowledge that Mr. Moyer kicked Capitol off of
23 the long distance service that RAM provided. Is that a fair
24 characterization of your testimony?

25 A I wasn't aware that Mr. Moyer kicked Capitol off the

1 network, right.

2 Q Well, does that mean you were aware that RAM
3 required Capitol to get off the channels -- the circuits? I'm
4 sorry.

5 A No.

6 Q You had no knowledge of the events which transpired
7 around the time that Capitol got off of RAM's long distance
8 circuits?

9 A To some -- I had some knowledge of it, yes.

10 Q You had some knowledge?

11 A But I don't know the exact particulars of why
12 Capitol left.

13 Q Do you know whether the decision for Capitol to get
14 off those long distance circuits emanated with RAM?

15 A I don't recall.

16 Q You don't recall?

17 A No. It didn't seem to be an issue to me.

18 Q Do you recall a telephone conversation on
19 January 29, 1990 with Mike Raymond regarding this subject?

20 A From me?

21 Q From you.

22 A No.

23 Q Is it your testimony that the conversation did not
24 occur?

25 A No. I just don't recall having a conversation with

1 Mr. Raymond on that date.

2 Q But you could have discussed this subject with him
3 on that date by a telephone conversation?

4 A Yes.

5 Q And isn't it also true that you could have told Mr.
6 Raymond that Capitol has 40 days to get off RAM's system?
7 Isn't that true?

8 A I don't recall that, no.

9 Q But it could have happened, couldn't it?

10 A I guess it could have. I don't recall that.

11 Q Now, the Government has testified that RAM had a
12 device on the system, it's paging system, that I will call a
13 two minute time out device and, in shorthand, what it did was
14 delay RAM's transmissions for a maximum of two minutes and
15 then RAM would transmit on 152.48 whether the channel was
16 clear or not. Do you recall that type of device?

17 A Yes.

18 Q When was that device installed?

19 A I don't know.

20 Q Approximately?

21 A I didn't install the device and I don't know when it
22 was installed. I think --

23 Q Were you aware of it?

24 A Yes. I think Forrest Collier installed that device.

25 Q When was it -- when was its use discontinued?

1 A I don't know.

2 Q Isn't it true that the, the device was discontinued
3 in response to a letter from the FCC basically stating that
4 the device was improper?

5 A I don't know.

6 Q You don't know.

7 MR. HARDMAN: Your Honor, I would like to have
8 marked for identification as -- I guess we would be up to CAP
9 25.

10 JUDGE CHACHKIN: 25, that's correct.

11 (The document referred to as CAP
12 Exhibit No. 25 was marked for
13 identification.)

14 MR. HARDMAN: May I approach the witness?

15 JUDGE CHACHKIN: Yes.

16 MR. HARDMAN: I have two copies for the reporter.

17 BY MR. HARDMAN:

18 Q Mr. Bobbitt, Exhibit CAP 25 for identification is a
19 two page document purporting to be a letter from the Federal
20 Communications Commission to RAM Technologies, Inc. regarding
21 WNJN 621 and dated July 30, 1992, and I would first ask you
22 isn't WNJN 621 the call sign of RAM's private carrier paging
23 system serving the Ashland, Kentucky and Charleston, West
24 Virginia areas?

25 A I believe it is, yes.

1 Q Have you ever seen this document before?

2 A No, I haven't.

3 Q Were you ever told that such a document was received
4 by RAM?

5 A No.

6 Q Were you ever told that the time out device that we
7 referred to a moment ago should have been -- needed to be
8 discontinued because of this letter?

9 A Not exactly.

10 Q But in substance that was --

11 A Yeah.

12 Q -- your understanding?

13 A Right. We understood that there was a problem --
14 someone had a problem with the two minute timer.

15 Q And, therefore, the -- it needed to be discontinued?

16 A Yes.

17 MR. HARDMAN: I have no further questions, Your
18 Honor.

19 JUDGE CHACHKIN: Well, first of all, the document
20 described will be marked for identification as Capitol Exhibit
21 25. Are you offering the exhibit?

22 MR. HARDMAN: I would offer this into evidence at
23 this time.

24 JUDGE CHACHKIN: Any objection?

25 MS. LADEN: Your Honor, I would -- obviously it's a

1 Commission document. Our objection is to relevance. The use
2 of the two minute timer has been the subject of a separate
3 action by the Bureau. It's not an issue in this case.

4 JUDGE CHACHKIN: What action was taken by the
5 Bureau?

6 MS. LADEN: This is a warning letter about the
7 usage.

8 JUDGE CHACHKIN: All right.

9 MS. LADEN: And, and we addressed this a couple days
10 ago to testimony about this.

11 JUDGE CHACHKIN: Well, it's been one of your
12 exhibits.

13 MS. LADEN: This one?

14 JUDGE CHACHKIN: This reference to the timing device
15 is in one of your exhibits.

16 MS. LADEN: Yes. It's in the exhibit that --

17 JUDGE CHACHKIN: You didn't ask that that part of it
18 not be received.

19 MS. LADEN: I believe the exhibit it was in -- I'm
20 not sure, but I believe it was in the report from the Field
21 Operations --

22 JUDGE CHACHKIN: I understand. You didn't ask that
23 that part of the exhibit not be received. You also didn't
24 object to questions asked by Mr. Joyce concerning RAM's
25 equipment and its technology and its ethics to prevent -- not

1 interference. All of a sudden you're objecting.

2 MS. LADEN: Your Honor, I'm not objecting to
3 anything that has to do with RAM and counsel for --

4 JUDGE CHACHKIN: Well, doesn't this have to do with
5 RAM?

6 MS. LADEN: Yes. I'm not objecting to everything
7 that has to do with RAM.

8 JUDGE CHACHKIN: Well, why do you object to this
9 exhibit?

10 MS. LADEN: Because this matter of the two minute
11 timer about which Mr. -- I did not hear Mr. Joyce ask any
12 questions.

13 JUDGE CHACHKIN: He may not have asked questions
14 about this because it's detrimental to RAM, but you didn't
15 object to anything else that RAM asked.

16 MS. LADEN: I'm not saying -- Your Honor, the
17 problem with this is that it's not relevant to any of the
18 issues in the --

19 JUDGE CHACHKIN: Why isn't it relevant?

20 MS. LADEN: Because it has to do with behavior by
21 RAM and not by Capitol.

22 JUDGE CHACHKIN: Oh, you only think this plays some
23 role -- many of these issues that we're dealing with deal
24 with RAM's actions and actions by Capitol?

25 MS. LADEN: No, I don't.

1 JUDGE CHACHKIN: Have you separated the two?

2 MS. LADEN: Yes, Your Honor. The Bureau has and --

3 JUDGE CHACHKIN: Have you objected to questions
4 which have nothing to do with your direct examination and
5 which were asked by Mr. Joyce? Did you object to any of those
6 questions? I didn't hear any objections.

7 MS. LADEN: I have objected every time I have heard
8 a question about --

9 JUDGE CHACHKIN: I haven't heard you object to a
10 single question asked by RAM's attorney since this hearing
11 began. Have you objected to a single question?

12 MS. LADEN: I don't remember, Your Honor.

13 JUDGE CHACHKIN: I don't think you have.

14 MS. LADEN: I don't believe counsel for RAM has
15 asked a question about the two minute timer.

16 JUDGE CHACHKIN: That's true, but they've asked
17 other questions concerning RAM's equipment.

18 MS. LADEN: I haven't objected to questions about
19 RAM's equipment. I have objected to any questions --

20 JUDGE CHACHKIN: Well, why isn't that relevant? You
21 haven't objected when questions were put by Mr. Joyce.

22 MS. LADEN: The reason I'm objecting to this, Your
23 Honor, is that this is not an issue in the case and this is
24 the subject --

25 JUDGE CHACHKIN: Well, I disagree with you. Capitol

1 Exhibit 25 is received.

2 (The document previously marked for
3 identification as CAP Exhibit No. 25
4 was received into evidence.)

5 JUDGE CHACHKIN: Go ahead. You have no further
6 questions of this witness?

7 MR. HARDMAN: Not at this time, Your Honor.

8 JUDGE CHACHKIN: All right. Does the Bureau have
9 any redirect?

10 MS. LADEN: I'm sorry. Were you finished?

11 JUDGE CHACHKIN: Yes. Yeah. I think redirect --

12 MS. LADEN: Oh, I'm sorry. I didn't hear. Your
13 Honor, I have copies of the exhibit which was offered -- which
14 was received yesterday, Private Radio Bureau Exhibits 16 and
15 17. I have an original and the Bureau referred to the fact
16 that the copy authenticated yesterday was a copy. Could I
17 approach the witness with the original?

18 JUDGE CHACHKIN: Sure.

19 MS. LADEN: Thank you.

20 REDIRECT EXAMINATION

21 BY MS. LADEN:

22 Q Mr. Bobbitt, yesterday I asked you whether you had
23 seen copies of those printouts before and you indicated that
24 -- if I recall, that they appeared to be copies and that the
25 original would differ in its appearance in some way.

1 A Yes.

2 Q I've now given you copies of the -- what I believe

3 are the originals of Private Radio Bureau Exhibits 16 and 17.

4 A They are.

5 Q Do those look like the originals?

6 A They are the originals, yes.

7 Q Thank you very much.

8 MS. LADEN: Your Honor, I would like to give the

9 court reporter those originals. I did give a copy yesterday.

10 JUDGE CHACHKIN: Oh, you want -- you gave a copy.

11 You want to -- well, now you want to give her the original?

12 MS. LADEN: That's correct.

13 JUDGE CHACHKIN: All right.

14 MS. LADEN: And that way she'll have an original and

15 a copy.

16 JUDGE CHACHKIN: All right. So the original will be

17 marked as an original.

18 MR. HARDMAN: Your Honor?

19 JUDGE CHACHKIN: Yes.

20 MR. HARDMAN: Just a point of clarification.

21 JUDGE CHACHKIN: Do you want to see the original?

22 MR. HARDMAN: Well, yes, if I could please.

23 JUDGE CHACHKIN: Is it different that the copies in

24 any way?

25 MS. LADEN: Not to my knowledge.

1 MR. JOYCE: No, Your Honor.

2 JUDGE CHACHKIN: All right.

3 MR. JOYCE: The copies -- for Ken's -- for Mr.
4 Hardman's clarification and the court's and Your Honor's
5 clarification, the copies were reduced somewhat because the
6 original was on computer printout paper so that all the
7 information would, would fit on the page.

8 MR. HARDMAN: Is it correct then that when the
9 witness yesterday identified the paper that the printout was
10 on as fan-fold with the tractor feed and so forth that those
11 identifying -- these are separated pages into 8-1/2" x 11" of
12 the original fan-fold paper? Is that right?

13 MR. JOYCE: That is correct.

14 MR. HARDMAN: Thank you, Your Honor.

15 BY MS. LADEN:

16 Q Mr. Bobbitt, when you were answering questions that
17 you were asked by Mr. Joyce yesterday you talked about
18 interference. You indicated that what you were terming
19 interference at that time had lasted for a number of years.
20 To your knowledge when was the last instance of interference?

21 A I don't recall, but the last time that I listened
22 and was part of identifying problems was in the fall of '92.

23 Q You also talked with Mr. Joyce about RAM's initial
24 success and the beginning of his business. When did RAM start
25 its PCP business?

1 A In 1989, I believe.

2 Q Was Capitol already operating an RCP system at that
3 time?

4 A Yes, they were.

5 Q Was Capitol's RCP system coverage over approximately
6 the same area?

7 A I really don't know what their coverage map looked
8 like.

9 Q Now, yesterday you indicated that you never
10 identified a Capitol customer. I believe that was your
11 testimony. Is that correct?

12 A I never did personally. Mr. Blatt did.

13 MR. HARDMAN: I object, Your Honor. The question
14 was whether this witness identified any and the answer was
15 that he had -- did not personally and the rest is non-
16 responsive.

17 JUDGE CHACHKIN: I'll strike the reference to Mr.
18 Blatt.

19 BY MS. LADEN:

20 Q And you also testified yesterday that -- Company.
21 Do you ever talk to salesmen about some of their sales calls
22 or problems?

23 A Yes.

24 Q Did any --

25 MR. HARDMAN: Your Honor, I want to interpose an

1 objection early. I fail to see the relevance of this line of
2 question or anything that it relates to my cross-examination
3 on.

4 MS. LADEN: I think this relates to Mr. Joyce's
5 cross-examination and I think the next question will make
6 clear where I'm going. My question was -- is did any of the
7 salesmen from RAM ever say to you that they went to make a
8 sales call and were told that the person they were pitching
9 had already signed up with Capitol?

10 MR. HARDMAN: Objection. That's rank hearsay.

11 JUDGE CHACHKIN: What's -- it is hearsay. Where are
12 we going with this?

13 MS. LADEN: That's fine, Your Honor. I'll withdraw
14 the question.

15 BY MS. LADEN:

16 Q Now, you answered some questions that Mr. Hardman
17 had asked you about setting up -- about a group called --
18 several hypotheticals involved a group call feature. Is that
19 correct?

20 A Yes.

21 Q If you were going to set up a group call, and you
22 gave your opinion as I recall as to how you would set up --
23 set it up or not set it up. If you were going to set up a
24 group call feature how would you set it up?

25 A I'd really need more specifics, but the general

1 function in the commonwealth terminal to set up a chain is to
2 just set up each pager and chain the numbers to each other.

3 Q Would you, would you normally use a chaining?

4 A That's one way of doing it. Another way is to
5 program pagers on the same CAP code so that they all go off
6 simultaneously.

7 Q Would you use, would you use different frequencies?
8 Would you chain different frequencies?

9 A As I said earlier, I didn't see any relevancy to
10 doing that, any advantage or any, any reason to do that within
11 the same coverage area. Now, of course, I might if it matters
12 -- if it means that one frequency covers a different area than
13 another frequency. That might be a legitimate way of getting
14 full coverage.

15 Q Would it be possible to set up such a system with,
16 with different frequencies?

17 A Yeah.

18 Q A group call?

19 A Yes.

20 Q Would it be a difficult matter to set up?

21 A No.

22 Q Now, if you were going to set up a system like that,
23 would you -- if you were doing it, would you, would you test
24 it?

25 A Yes.

1 Q And how would you conduct the testing?

2 A I would set all the pagers on the desk and call the
3 number and when they all went off I would distribute them to
4 the, to the client.

5 MS. LADEN: I don't have any other questions.

6 JUDGE CHACHKIN: Do you have any questions?

7 MR. HARDMAN: No questions.

8 JUDGE CHACHKIN: You're excused. Thank you.

9 MR. BOBBITT: Should I take this, Your Honor?

10 JUDGE CHACHKIN: No. Just -- well, you can do --
11 (Whereupon, the witness was excused.)

12 JUDGE CHACHKIN: All right. You ready with the next
13 witness?

14 MS. LADEN: Your Honor, the Bureau has no other
15 witnesses.

16 JUDGE CHACHKIN: I see. Well, what do you want to
17 do with the rest of your exhibits? Do you want a ruling on
18 what's --

19 MS. LADEN: I believe we have introduced the
20 exhibits as we went along, but if I could just have a moment I
21 will double check.

22 JUDGE CHACHKIN: Well, there haven't been any
23 receipts of the numbered exhibits. There hasn't been an offer
24 of the numbered exhibits.

25 MS. LADEN: That's correct, Your Honor.

1 JUDGE CHACHKIN: All right.

2 MS. LADEN: Yes, Your Honor, you're quite correct.
3 I wanted to offer several exhibits, Private Radio Bureau
4 Exhibit No. 10.

5 JUDGE CHACHKIN: Excuse me. Let me see what 10 is.
6 This is just to -- for official notice purposes as to what
7 took place? Is that why you're offering this?

8 MS. LADEN: Well, yes, Your Honor.

9 JUDGE CHACHKIN: Not for the truth of anything
10 stated there?

11 MS. LADEN: Well, yes, Your Honor, I believe it is
12 for the truth. It's a 308(b) letter. It may even be
13 duplicated in -- one of these is duplicated in Capitol's
14 exhibits.

15 JUDGE CHACHKIN: All right. Well, first of all, any
16 objection to Private Radio Bureau Exhibit 10?

17 MR. HARDMAN: No, no objection.

18 JUDGE CHACHKIN: All right. Private Radio Bureau
19 Exhibit 10 is received.

20 (The document previously marked for
21 identification as PRB Exhibit No. 10
22 was received into evidence.)

23 JUDGE CHACHKIN: Anything else?

24 MS. LADEN: Private Radio Bureau Exhibit No. 11,
25 Your Honor, which is the response to No. 10.